



# The hearing – guidance for claimants and respondent

## Introduction

This booklet explains the different types of Employment Tribunal hearings, how to prepare for them, what happens at them and afterwards.

Please contact a tribunal office or the Customer Contact Centre if you would like a copy of this booklet in an alternative format:

**England and Wales:** 0300 323 0196

**For Welsh speakers:** 0300 303 5176

**Scotland:** 0300 790 6234

### Presidential Guidance

Under the Employment Tribunal Rules the Presidents of the Employment Tribunals in England and Wales and Scotland may issue Presidential Guidance. The aim of that guidance is to improve consistency in the way Employment Tribunals manage cases and enable the parties to better understand what is expected of them and what to expect. It is not binding but should be followed where possible.

The Presidential guidance issued by both Presidents may be found at:  
<https://www.judiciary.gov.uk/subject/employment/>

## The hearing

You will find the date, time and place of the hearing, and the estimated time it will take on the letter we sent to you. If you are not sure about where and when the hearing is to be held, please contact the tribunal office. You should arrive at the hearing centre at least 30 minutes before the hearing is due to start, making allowances for possible travel delays.

## Will my case be heard on the date given?

We will try to deal with your case as quickly as possible but delays can happen, for example, because the case before yours takes longer than planned. We aim to deal with as many cases as possible during each day. This may mean some cases are 'unallocated' and will start as soon as there is a tribunal available. If it becomes clear that a tribunal cannot hear your case that day, we will tell you as soon as possible.

## **Can I ask for the hearing to be postponed?**

You must make a request for a postponement in writing as soon as possible giving full reasons for your request. You should also send a copy of your request to the other side so that they are aware of it and tell them to contact us as soon as possible if they object.

An Employment Judge will decide whether it is in the interests of justice to grant a postponement and they may want the views of the other side before reaching a decision. You should not assume that your request has been granted. We will inform you if it has.

If you or the other side (or somebody else acting for you or the other side) fails to appear at a hearing, the tribunal may decide the case in your or their absence.

## **What should I do if my case settles or I want to withdraw my claim?**

You should let us know immediately if your case settles before the hearing. The conciliation officer will let us know if your case is settled through Acas. If you are the claimant you must tell us in writing if you decide to withdraw either all or part of your claim. You must also tell the respondent that you are withdrawing your claim. You must do this as soon as possible. If you withdraw your claim then, it will be automatically dismissed except in some very limited circumstances where you ask that it should not be or the Tribunal considers that dismissal would not be in the interests of justice. If the claim is dismissed you will not be able to make a further claim against the respondent which raises the same complaint.

If your claim settles through ACAS the claim will be removed from the list for hearing (if listed) and the case file will be destroyed in accordance with our destruction policy 12 months from the date of settlement.

## **What are the different types of hearing?**

**Preliminary hearings** – these may be held to manage the case including:

- clarifying the issues in the case;
- deciding what orders should be made about matters such as documents and witnesses; and

- deciding the date, time and length of the full hearing, or held to
- decide whether the whole or part of the claim or response should be dismissed;
- decide questions of entitlement to bring or defend a claim;
- decide, if either side's case appears weak, whether a deposit needs to be paid, and if so, how much, before that side can continue.

The letter giving you the date of the hearing will state the matters to be decided at the preliminary hearing, whether all or part of the hearing will be held in private and whether the hearing will take place over the phone, by video link or with the parties present.

Where the preliminary hearing is being held to decide whether the whole or part of the claim or response should be dismissed or to decide questions of entitlement to bring or defend a claim or whether a deposit needs to be paid by a party, it may be necessary for evidence to be given at such a hearing. You will need to decide which witnesses (if any) and evidence to bring, bearing in mind the specific matters which the tribunal will be considering at this stage.

**The final hearing** – This is the hearing that:

- decides whether the claim succeeds or fails and, if it succeeds,
- what remedy is appropriate

The hearing may, depending on the nature of the claim, be conducted either by a full tribunal which includes an Employment Judge and two lay members or by an Employment Judge sitting alone. Please see the 'What will happen at the hearing?' section later in this booklet for full details of the procedure at the hearing.

## **Representation at the hearing**

Even if you have represented yourself or your own organisation up to the date of the hearing, it may be possible for you to arrange representation at the hearing itself.

You can contact one of the following sources for assistance although you must do this in good time.

- If you are a member, you can contact your union or employer organisation
- You can contact free advice services such as a citizens' advice or law centre
- You can contact solicitors or other professional advisers. You may be able to get Legal Aid in Scotland

## **Preparing for a hearing**

It can be useful to watch a hearing at a tribunal so you understand the procedure and what happens. You can do this by contacting any tribunal office and asking if there is a suitable hearing for you to observe. Local office contact details can be found on the back page of this publication.

## **What documents do I need for the hearing?**

You may have been ordered by the tribunal to disclose your documents to the other side.

But even if you have not you must make sure that the other side has reasonable notice (at least seven days) of any documents which you plan to use at the hearing to support your case.

If you are relying on any documents, please bring them to the hearing in addition to your own copy, three copies if it is before an Employment Judge alone and five if it is before a full tribunal.

## **Can I bring witnesses to the hearing?**

You can bring witnesses to the hearing to give relevant evidence. Even if you have not been told to, it is helpful if you let the tribunal know beforehand how many witnesses you plan to bring. You may have been ordered by the tribunal to produce a written statement of your own evidence and for your witnesses. Even if you have not you may wish to consider doing so. However, in Scotland you should not do so unless ordered by the tribunal.

It is very important that your witnesses attend the hearing to give evidence as the Tribunal will place very little weight on the statement of a witness who is not present. **It is your responsibility to make sure that your witnesses come to the hearing.**

## **Can the tribunal order a witness to come to the hearing?**

You may ask the tribunal to issue a witness order which will summon someone that you want to have at the hearing, even if they do not want to be there, provided the evidence they will give is relevant to your case. You must apply in writing well before the hearing.

If you do so you will need to tell the tribunal:

- the name and address of the witness;
- what the witness will say and how it will help your case; and
- why the witness is not willing to come to the hearing voluntarily

## **What do I need to do about compensation and remedy?**

## **If you are the claimant,**

You will need to produce evidence to show that you are entitled to the amount you are claiming. In an unfair dismissal case or discrimination claim involving loss of employment, you must be able to show what steps you have taken to find new employment. If you do not provide this information, you may not only recover less than you might otherwise be entitled

to, but, if a further hearing is needed as a result of your failure, an order for costs (in Scotland, known as 'expenses') could be made against you.

## **If you are the respondent,**

You should produce any evidence and submissions which relate to what the claimant is looking for if their claim is successful.

If the claimant succeeds in a complaint of unfair dismissal (or failing to allow a woman to return to work after pregnancy) the tribunal may consider ordering reinstatement or reengagement. As a result you should be prepared to give evidence at the hearing as to:

- the availability of the job which the claimant held or of similar jobs;
- whether you would take the claimant back either in the old job or in a similar one; and
- your reasons if you say it would not be practical or possible to reinstate the claimant

If the claimant has indicated in advance that they are seeking re-engagement or reinstatement and you do not have the information available at the hearing so that an adjournment is required, you will probably be ordered to pay the costs caused by the adjournment.

You should also be prepared to give evidence at the hearing as to what you would consider to be appropriate compensation and how you arrive at your assessment.

If the claimant was a member of a pension scheme, you must bring the following information to the tribunal.

- Whether the scheme was a defined contributions or a final-salary scheme
- If it was a final-salary scheme, what is the value of the deferred pension
- The retirement age under the scheme
- The amount of the employer's contribution to the scheme

If you do not give the tribunal the necessary information, a further hearing may be needed which could lead to an order for costs being made against you.

## **Security in our buildings**

You will be asked to pass through a security arch, or to be scanned with a hand held detector before entering our building. Please tell security staff if you have any medical implants (such as a pacemaker) which may be affected or detected by the scanner.

You will also be asked to allow officers to conduct a visual search of the contents of any bags, and you may have prohibited items taken from you.

Any offensive weapons found by search procedures will be confiscated and you will be reported to the police.

If you refuse to be searched, you may be removed from or not let in the building.

## **What will happen at the hearing?**

When you arrive at the tribunal you should report to reception. Before the hearing a tribunal clerk will discuss with you the number of witnesses you have and collect any documents you may have brought for the tribunal. You should tell the clerk if you or any of your witnesses have any special needs or concerns. The Employment Judge will make sure that you take the steps described below in a calm and measured way. However, he or she may have to be firm in moving the case on to make sure that it proceeds at a pace which allows it to be dealt with within the time set aside. Under the tribunal rules, the tribunal has the power to timetable the case so that it is dealt with within a specific time frame. If this step is being considered it will be discussed with you. Generally in an unfair dismissal case the respondent will give evidence and call any witnesses first, while in a discrimination case the claimant will normally be first to give evidence followed by any witnesses. However, there is no absolute rule as to which side starts and this will be discussed with you before the hearing begins.

You and your witnesses will have to give evidence on oath or affirmation. If you lie after swearing an oath or affirmation you could be convicted of perjury. In England and Wales, if the parties have been ordered to exchange witness statements, these will stand as the witness's evidence and in most cases will not be read out in Tribunal. In Scotland witness statements are not normally used although they can be in some cases if ordered by a judge. You or your witnesses can be asked questions by the other side (this is called 'cross-examination'). You or your witnesses can then give further evidence to clarify matters which came up when being asked questions by the other side ('re-examination'). Finally, the Employment Judge and members may also ask some questions which both parties can answer.

## A typical tribunal hearing



The same procedure is followed with all witnesses and parties. Once all the evidence has been heard, both sides can sum up before the tribunal retires to consider their judgment. Unless the tribunal 'reserves' its judgment, the Employment Judge will announce the judgment and the reasons for it at the end of the hearing. If the judgment is reserved you will receive it, and the reasons for it, in writing at a later date.

This may happen in complicated cases or if there is not enough time on the day of the hearing to come to and announce the judgment.

The tribunal will normally expect to deal with compensation issues at the hearing. The time set aside for the hearing will usually include time for this.

### What happens next?

Wherever possible you or your representative will be given a copy of the tribunal's judgment on the day of the hearing. If this is not possible you or your representative will be sent a copy of the written judgment as soon as possible after the hearing. You must abide by the Employment Tribunal judgment as it is legally binding.

Written reasons for the judgment will also be given if you ask for them at the hearing or make a written request within 14 days of the date that the judgment was sent to you.

### Publication of Employment Tribunal Judgments

Regulation 14(1) of the Employment Tribunals (Constitution and Rules of Procedure) Regulations (S.I. 2013/1237) (the Regulations) requires the Lord Chancellor to maintain a register of all judgments (including written reasons) issued by Employment Tribunals. **The contents of the register are made available for public inspection.**

The vast majority of judgments issued to parties must be published on the register which is available online at <https://www.gov.uk/employment-tribunal-decisions>.

The Employment Tribunal Rules of Procedure (the Rules) are set out in Schedule 1 of the Regulations. An Employment Tribunal has the power, under Rule 50 to make an order with a view to preventing or restricting the public disclosure of any aspect of the tribunal proceedings **but it can only make such an order if one or more very strict conditions are met.** (Rule 50 gives more detail about these conditions.)

Under Rule 50 it is possible for an Employment Tribunal to make an order which places restrictions on what may be published in the register. This can include, for example, an order which anonymises the name of one or more individuals referred to in the judgment. Anyone who wishes to apply for an order under Rule 50 should do so **as early as possible in the tribunal proceedings.** Any application of this type can be made in writing or at any hearing.

## Can I claim expenses?

HM Courts and Tribunals Service does not, where the claim was made on or after 6 April 2012, meet the expenses or allowances of parties, witnesses and volunteer representatives attending an employment tribunal hearing of any type (other than where the person attending the hearing has been called by the tribunal to give medical evidence).

If the claim was made on, or before 5 April 2012, then a leaflet Expenses and allowances payable to parties and witnesses attending an Employment Tribunal is available at [www.gov.uk/government/collections/employment-tribunal-forms](http://www.gov.uk/government/collections/employment-tribunal-forms)

## Disability or special needs

If you or anyone coming to a tribunal with you has a disability or a particular need, you should contact the tribunal office dealing with your case to discuss the matter. Examples of the help we can provide include converting documents to Braille or larger print and paying for sign language interpreters. We can also provide hearing induction loops in the room where the hearing is held if you need them. Please contact us as soon as possible so that suitable arrangements can be made.

## Employment tribunal offices

<b>Aberdeen</b>	Ground floor, AB1, 48 Huntly Street, Aberdeen AB10 1SH	<b>t.</b> 01224 593 137 <b>e.</b> <a href="mailto:aberdeenet@justice.gov.uk">aberdeenet@justice.gov.uk</a>
<b>Bristol</b>	Bristol Civil and Family Justice Centre, 2 Redcliff Street, Bristol BS1 6GR	<b>t.</b> 0117 929 8261 <b>e.</b> <a href="mailto:bristolet@justice.gov.uk">bristolet@justice.gov.uk</a>
<b>Dundee</b>	Ground Floor, Endeavour House, Greenmarket, Dundee, DD1 4BZ	<b>t.</b> 01382 221578 <b>e.</b> <a href="mailto:dundeet@justice.gov.uk">dundeet@justice.gov.uk</a>



<b>East London</b>	2nd Floor, Import Building, 2 Clove Crescent, London E14 2BE	<b>t.</b> 020 7538 6161 <b>e.</b> eastlondon@justice.gov.uk
<b>Edinburgh</b>	54-56 Melville Street, Edinburgh EH3 7HF	<b>t.</b> 0131 226 5584 <b>e.</b> edinburghet@justice.gov.uk
<b>Glasgow</b>	The Glasgow Tribunals Centre, 3 Atlantic Quay, 20 York Street, Glasgow G2 8GT	<b>t.</b> 0141 204 0730 <b>e.</b> glasgowet@justice.gov.uk
<b>Leeds</b>	West Gate, 6 Grace Street, Leeds, LS1 2RP	<b>t.</b> 0113 245 9741 <b>e.</b> leedset@justice.gov.uk
<b>London Central</b>	Victory House, 30-34 Kingsway, London WC2B 6EX	<b>t.</b> 020 7273 8603 <b>e.</b> londoncentralet@justice.gov.uk
<b>London South</b>	Montague Court, 101 London Road, West Croydon CR0 2RF	<b>t.</b> 020 8667 9131 <b>e.</b> londonsouthet@justice.gov.uk
<b>Manchester</b>	Alexandra House, 14-22 The Parsonage, Manchester M3 2JA	<b>t.</b> 0161 833 6100 <b>e.</b> manchesteret@justice.gov.uk
<b>Midlands (East)</b>	Nottingham Justice Centre Carrington Street, Nottingham NG2 1EE	<b>t.</b> 0115 947 5701 <b>e.</b> midlandseastet@justice.gov.uk
<b>Midlands (West)</b>	Centre City Tower, 7 Hill Street, Birmingham B5 4UU	<b>t.</b> 0121 600 7780 <b>e.</b> midlandswestet@justice.gov.uk
<b>Newcastle</b>	Newcastle Civil Family Courts and Tribunal Centre, Barras Bridge, Newcastle Upon Tyne NE1 8QF	<b>t.</b> 0191 205 8750 <b>e.</b> newcastleet@justice.gov.uk
<b>Wales</b>	Cardiff and the Vale Magistrates Court, Fitzalan Place, Cardiff, South Wales CF24 0RZ	<b>t.</b> 029 2067 8100 <b>e.</b> waleset@justice.gov.uk
<b>Watford</b>	3rd Floor, Radius House, 51 Clarendon Rd, Watford WD17 1HP	<b>t.</b> 01923 281 750 <b>e.</b> watfordet@justice.gov.uk

Our offices are open from 9.00am to 5.00pm Monday to Friday.

We will direct you to a map showing the location of the office where the hearing has been arranged.